

## **The complaint**

Mr P complains about Fortegra Europe Insurance Company Ltd ("FEI") and their decision to decline the claim he made on his Guaranteed Asset Protection ("GAP") insurance policy.

## **What happened**

The claim and complaint circumstances are well known to both parties. So, I don't intend to list them chronologically in detail. But to summarise, Mr P held a GAP insurance policy, underwritten by FEI, when his car was damaged and deemed a total loss. So, he contacted FEI to make a claim, following a settlement from his comprehensive motor insurer, who I'll refer to as "C".

But FEI declined the claim, explaining that as Mr P had retained the salvage, they didn't believe his claim met the terms and conditions of the policy. Specifically, FEI explained that for the claim to be valid, Mr P's car had to become the property of C. And as Mr P had retained the salvage and received a settlement that included a salvage deduction, they didn't think it had. Mr P was unhappy about this decision, so he raised a complaint.

FEI responded to the complaint and didn't uphold it, reiterating why they felt they were fair to decline the claim. Mr P remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. Both parties have had sight of our investigators view, so I won't be recounting it in detail. But to summarise, our investigator set out why they felt FEI were unfair to decline the claim as they were satisfied C had a controlling interest in the car, resulting in Mr P receiving a lower settlement to factor in the salvage value. And they explained why they didn't think FEI were prejudiced by Mr P agreeing his claim with C to be processed in this way.

So, they recommended FEI re-assess the claim, disregarding the term they had used to decline the claim already. And should a payment be made after this, that 8% simple interest is applied to that amount from the date of the claim decline to the date of payment. They also recommended FEI pay Mr P £200 compensation to recognise the distress and inconvenience he had experienced.

Mr P accepted this recommendation. But FEI didn't in part. They agreed to pay Mr P the £200 recommended, but they maintained why they thought they were fair to decline the claim. Our investigator's view remained unchanged and so, the complaint has been passed to me for a decision.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented

on any specific point, it's because I don't believe it's affected what I think is the right outcome.

When deciding this complaint, I've considered the actions FEI have taken alongside the policy terms and conditions, and their requirements set out with the relevant rules and regulations. These make it clear that an insurer such as FEI must not unreasonably reject a claim.

In this situation, FEI have declined Mr P's claim explaining why they didn't think his car met their definition of a total loss. Specifically, they have explained this is because Mr P's car didn't become the property of C. The definition FEI have used has already been quoted specifically by our investigator and in FEI's complaint response and so, I don't intend to quote this again.

So, I've considered whether I'm satisfied FEI were fair to decline the claim on this basis. Having done so, I don't think they were, and I'll explain why.

It's not disputed that Mr P's car was deemed a total loss by C. And it's not in dispute that C provided a total settlement of £39,999 for the value of his car, within the limits of his motor insurance policy. But Mr P didn't receive this entire amount, as £10,000 was deducted by C for the salvage value as Mr P elected to retain the salvage of his car. And it's this choice that FEI have referred to when declining the claim.

But I'm not persuaded this is a fair action for FEI to take. When a car is deemed a total loss, an insurer will provide a settlement for the car value, with the car then becoming their property. And an insurer will often then sell the salvage and retain the funds of this. But in line with standard industry approach, an insurer usually offers their customer first right of refusal to purchase the salvage themselves. And this is the option Mr P chose.

So, to simplify the process, C applied a deduction for the salvage of the car to the total settlement Mr P received. For C to be able to make this deduction, I'm satisfied they had a controlling interest in the car. And because of this, I'm not persuaded it was fair for FEI to determine that Mr P's car hadn't become the property of C. It's clear that Mr P paid the salvage value, by way of a settlement deduction, to C. So, I'm satisfied that at the time this was agreed, C did essentially own Mr P's car and because of this, I'm satisfied FEI have acted unfairly when declining the claim for the reason they provided.

This is furthered by the options FEI provided to Mr P within their complaint response. Within this, they advised Mr P could return his car to C and they would then reconsider his claim, leaving him free to buy it back afterwards. But this is essentially what Mr P has already done when receiving a settlement with a salvage deduction. So, I'm not satisfied the way in which C processed Mr P's claim, and his choice to retain the car for the salvage cost, has prejudiced FEI's position in a way that makes it reasonable for them to decline his claim.

So, as I'm satisfied FEI have acted unfairly here, I've then turned to what they should do to reasonably put things right.

### **Putting things right**

When deciding what FEI should do to put things right, any award or direction I make is intended to place Mr P back in the position he would have been in, had FEI acted fairly in the first place.

In this situation, had FEI acted fairly, they would have assessed his claim on the basis that the definition of total loss had been met. So, this is what they now should do. And if this then

results in FEI paying Mr P's claim, 8% simple yearly interest should be applied to the amount FEI pay, from the date the claim was initially declined to the date of payment, to recognise the time Mr P has been without access to these funds.

I note both FEI and Mr P accepted the £200 compensation recommended by our investigator to recognise the distress and inconvenience the situation has caused him. As this is agreed by both parties, I don't intend to discuss this in detail as I'm satisfied it's not in dispute.

But for completeness, I want to make clear that I'm satisfied this payment is a fair one, that falls in line with our services approach and what I would have directed, had it not already been put forward. I think the amount fairly reflects the inconvenience caused to Mr P when needing to spend time defending his position with FEI and the frustration he will have felt believing he was without access to a significant amount unfairly, considering his intention was to arrange for his car to be repaired to bring it back to roadworthy status. So, this payment is one I'm now directing FEI to make.

### **My final decision**

For the reasons outlined above, I uphold Mr P's complaint about Fortegra Europe Insurance Company Ltd and I direct them to take the following action:

- Reassess Mr P's claim on the basis it has met the definition of a total loss, disregarding the term used to decline his claim previously;
- If this results in a payment being made, 8% simple yearly interest should be applied to this payment from the date of the initial claim decline to the date of payment; and
- Pay Mr P £200 compensation to recognise the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 July 2025.

Josh Haskey  
**Ombudsman**